

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ARMANDO VASQUEZ AND
GISELA VASQUEZ,

Plaintiffs,

v.

Civil No. 1:22-CV-844

CARRIE DIEKER, MD; OSCAR CASTRION, MD;
DICKE ROMERO, MD; JIE LUO MD;
VICTOR BARNICA, MD; PHC-LAS CRUCES INC.
d/b/a MEMORIAL MEDICAL CENTER; AND
HSCGP, LLC

Defendants.

NOTICE OF REMOVAL OF ACTION

The United States of America, acting on behalf of Jie Luo, MD, named defendant in the above-captioned action, hereby gives notice to this Court of the removal of a civil action alleging medical malpractice commenced in the Third Judicial District Court, County of Doña Ana, State of New Mexico, Cause No. D-307-CV-2021-01841, entitled as above. This removal is pursuant to 42 U.S.C. § 233(c).

1. A civil action has been brought in the State of New Mexico, Third Judicial District Court for the County of Doña Ana, alleging medical negligence resulting in personal injury, and is now pending.

2. Attached to this Notice of Removal as **Exhibit A** are copies of all pleadings filed in the Third Judicial District Court for the County of Doña Ana, State of New Mexico in this action, that have been received by and are in the possession of the United States.

3. The above-referenced New Mexico State Court action is properly subject to removal because the Bureau of Primary Health Care, in accordance with Section 224(h) of the

Public Health Service Act, 42 U.S.C. § 233(h), as amended by the Federally Supported Health Centers Assistance Acts of 1995 (P.L. 104-73), deemed Ben Archer Health Center and its employee, Jie Luo, MD, to be covered by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 *et seq.*, for damages for personal injury, resulting from the performance of medical, surgical, and related functions, and is exclusive of any other civil action or proceeding. Ben Archer Health Center and its employees were deemed covered by the Act for all times relevant to the allegations contained in the First Amended Complaint for Medical Malpractice.

4. Congress has provided, upon certification by the Attorney General or his designee, that the defendants were acting in the scope of their employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a state court shall be removed at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of Title 28 of the United States Code. 42 U.S.C. § 233(c); 28 U.S.C. §§ 1346(b), 2671 *et seq.*

5. Filed with this Notice of Removal as **Exhibit B** is a Certification by Alexander M.M. Uballez, United States Attorney for the District of New Mexico, that Defendant Jie Luo, MD, was deemed an employee of the Public Health Service, and that the employees were acting within the scope of their Federal employment at the time of the incident giving rise to this suit. The authority to certify scope of office or employment has been delegated to the United States Attorney. *See*, 28 C.F.R. § 15.4.

6. Defendant Jie Luo, MD, is covered by the provisions of the Federal Tort Claims Act. 42 U.S.C. §§ 233(a).

WHEREFORE, the United States gives notice that, pursuant to 42 U.S.C. § 233(c), Cause No. D-307-CV-2021-01841 in the State of New Mexico, Third Judicial District Court for the County of Doña Ana, is removed to this Court.

Respectfully submitted,

ALEXANDER M.M. UBALLEZ
United States Attorney

/s/ **Brett C. Eaton**

Brett C. Eaton

Assistant U.S. Attorney

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I HEREBY CERTIFY that on November 7, 2022, I filed the foregoing pleading electronically through the CM/ECF system, and served the foregoing pleading on the following non-EM/ECF Participants via first class mail, postage prepaid addressed to:

/s/ **Brett C. Eaton**

Brett C. Eaton

Assistant U.S. Attorney